

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Jose Torres)	File Number EB-08-PA-0180
)	
Licensee of Station N3TX)	NAL/Acct. No. 200932400002
)	
Philadelphia, Pennsylvania)	FRN 0001 83 1825

FORFEITURE ORDER

Adopted: May 13, 2011**Released:** May 16, 2011

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Jose Torres (“Torres”), the licensee of Amateur Extra Class Station N3TX in Philadelphia, Pennsylvania, for willfully and repeatedly operating his amateur station on an unauthorized frequency at his residence, in violation of section 1.903(a) of the Commission's Rules.¹ In this *Order*, we consider Torres's request that we cancel the forfeiture because he was not at his residence at the time of the unauthorized transmissions and his request that, in the event the forfeiture is not cancelled, it be reduced based on his inability to pay.

II. BACKGROUND

2. After receiving a complaint of interference, agents in the Enforcement Bureau's Philadelphia Office (“Philadelphia Office”) used mobile direction finding equipment on April 17, 2008, and June 2, 2008 to determine that the source of the interference was unauthorized radio transmissions on 26.71 MHz emanating from Torres's residence.² Torres's Amateur Extra Class License does not permit operation on 26.71 MHz.³ Torres previously was warned about not operating on 26.71 MHz on December 11, 2007 and received a Notice of Violation for operating on this unauthorized frequency from his residence, in violation of section 1.903(a) of the Rules.⁴ In response to the Notice of Violation, Torres admitted to operating on the unauthorized frequency of 26.71 MHz.⁵

¹ 47 U.S.C. § 1.903(a).

² On April 17, 2008, the unauthorized transmission occurred between 8:00 pm and 9:30 pm and on June 2, 2008, between 3:00 pm and 3:40 pm.

³ See 47 U.S.C. § 97.301.

⁴ See *Jose Torres*, Notice of Violation, NOV No. V20083240007, released January 3, 2008. The NOV also included a violation for failure to transmit a call sign identification, in violation of Section 97.119(a) of the Rules. During the 2007 investigation, agents inspected Torres's station and obtained audio recordings of the unauthorized transmissions.

⁵ Specifically, Mr. Torres wrote: “With this writing respond [sic] I agree to the Notice listed above. I fully understand this violation. According to my license N3TX I will transmit where I'm authorized, at the Extra Class portion only.”

3. On January 6, 2009, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of \$4,000 to Torres for operating on an unauthorized frequency on April 17, 2008 and June 2, 2008.⁶ Torres met with agents in the Philadelphia Office on February 17, 2009, to respond to the apparent findings in the NAL.⁷ During the meeting, Torres claimed that he was not at home during the alleged unauthorized operations on April 17, 2008, and June 2, 2008, and he submitted cell phone records in support of this claim. Torres also submitted his most recent three years of federal tax returns to support his request for a reduction based on an inability to pay.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,⁸ section 1.80 of the Rules,⁹ and the *Commission’s Forfeiture Policy Statement*.¹⁰ In examining Torres’s response, section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ We have considered Torres’s response to the NAL in light of these statutory factors and have found that cancellation or reduction of the forfeiture is not warranted for the reasons discussed below.

5. Section 1.903(a) of the Rules provides that stations in the Wireless Radio Service must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. Section 1.903(b) provides that the holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. As an Extra Class amateur licensee, Torres is not permitted to operate on 26.71 MHz. Nevertheless, agents found that, on April 17, 2008, and June 2, 2008, unauthorized transmissions on 26.71 MHz were emanating from Torres’s residence. The voice that the agents heard during the transmissions on April 17, 2008, and June 2, 2008, is the same voice that agents heard, and that Torres conceded was his, on December 11, 2007.

6. We find no merit to Torres’s claim that he was not at home when the unauthorized transmissions took place at his residence on April 17, 2008, and June 2, 2008. The cell phone records Torres submitted are evidence of nothing more than the fact that he was using his cell phone and not the landline phone located in his home. It does not prove that he was not at home at the time of the unauthorized transmissions. During his interview with agents at the Philadelphia Office on February 17, 2009, Torres provided no other information or documentation to support his claim that he was not at home at the time of the unauthorized transmissions. At no time does Torres claim or provide evidence that someone else in his house was responsible for the unauthorized transmissions. We therefore find that cancellation of the forfeiture on this basis is not warranted.

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932400002 (Enf. Bur., Philadelphia Office, rel. January 6, 2009).

⁷ The meeting with Torres took place in the Philadelphia Office on February 17, 2009. Torres requested the meeting based on an alleged language barrier and his inability to properly refute in writing the findings in the NAL. Two FCC agents and the Philadelphia Office’s Spanish-speaking Office Assistant were present during the meeting. Torres’s statements were recorded with his consent.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹¹ 47 U.S.C. § 503(b)(2)(E).

7. We likewise decline to reduce the forfeiture based on Torres's claimed inability to pay. In support of his request, Torres submitted three years of individual tax returns. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹² We have reviewed Torres's documentation and conclude that a reduction of the forfeiture is not warranted.¹³

8. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Torres willfully and repeatedly violated section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of \$4,000 is warranted.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended ("Act"), and sections 0.111, 0.311, 0.314 and 1.80(f)(4) of the Commission's Rules, Jose Torres **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating section 1.903(a) of the Commission's Rules.¹⁴

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.¹⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Jose Torres shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov

¹² See e.g., *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (licensee's gross revenues are the best indicator of its ability to pay a forfeiture and use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a licensee's financial condition).

¹³ See e.g., *Coleman Enterprises, Inc. D/B/A Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80(f)(4), 1.903(a), 1.903(b), 11.35(a).

¹⁵ 47 U.S.C. § 504(a).

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Jose Torres at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau